

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FLATIRON WEST, INC., a Delaware
Corporation,

Plaintiff,

v.

PTS SURVEYING INC., an Oregon
Corporation,

Defendant.

No. 2:19-cv-00201

FINDINGS OF FACTS AND
CONCLUSIONS OF LAW
REGARDING JOINT MOTION FOR
STIPULATED JUDGMENT AND
DETERMINATION OF
REASONABLENESS

NOTE ON MOTION CALENDAR:

APRIL 19, 2021

THIS MATTER, having come before the Court on Plaintiff Flatiron West, Inc.’s (“Flatiron”) and Defendant PTS Surveying, Inc.’s (“PTS”) Joint Motion for Entry of Stipulated Judgment and Determination of Reasonableness, Dkt. No. 37, and the Court having heard the parties and considered the memoranda and evidence filed in support of the Motion, including

1. The Joint Motion for Entry of Stipulated Judgment and Determination of Reasonableness, Dkt. No. 37;
2. The Declaration of Tyler Handforth in Support of Joint Motion for Entry of Stipulated Judgment and Determination of Reasonableness, Dkt. No. 38;
3. The Declaration of Virgil Curtis in Support of Joint Motion for Entry of Judgment and Determination of Reasonableness, Dkt. No. 39, and exhibits thereto;
4. The Declaration of Virgil Curtis Responding to Order Requiring Additional Information, and exhibits thereto;

1 5. The Declaration of Meghan A. Douris in Response to Court's Order Requiring
2 Additional Information;

3
4 The Court makes the following Findings of Fact and Conclusions of Law.

5 **I. FINDINGS OF FACT**

6 1. On February 12, 2019, Flatiron initiated this action by filing a Complaint alleging
7 that PTS breached contractual and professional duties by producing erroneous survey work which
8 resulted in a misalignment of substructural construction on the SR 520 Montlake to Evergreen Pt.
9 Bridge, West Approach Bridge North ("WABN") Project, a public works construction project for
10 the Washington State Department of Transportation ("WSDOT") in King County, Washington.

11 2. On March 22, 2019, PTS filed an answer and counterclaims in this action, asserting
12 counterclaims for breach of contract, breach of the duty to disclose, and violation of RCW
13 39.04.250 and RCW 39.04.011.

14 3. Prior to filing its Complaint in this case, Flatiron calculated its damages resulting
15 from the survey errors and misalignment to be no less than \$1,828,721. Flatiron pleaded this
16 amount in its prayer for relief.

17 4. On March 20, 2020, in a related action, Case No. 3:19-cv-00948-MO, the United
18 States District Court for the District of Oregon decided a summary judgment motion determining
19 that PTS's professional liability insurance policy does not cover Flatiron's claims because the
20 policy excluded coverage for work on certain bridge and tunnel projects and determined as a matter
21 of law that the WABN Project fell within the exclusion.

22 5. On January 27, 2021, Flatiron and PTS filed a joint Notice of Intent to Settle with
23 this Court, notifying the Court that the parties intended to enter into a covenant judgment.
24 agreement settling this action.

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26 6. PTS acknowledges that without insurance coverage it is unable to satisfy a

1 judgment for damages in Flatiron's favor in this action, and that continued litigation would present
2 significant financial hardship. PTS cannot afford to defend itself in the litigation. Given these
3 circumstances, it was reasonable for the parties to seek settlement by covenant judgment.

4 7. PTS acknowledges that it faced a risk that Flatiron would be able to prove liability
5 and damages no less than the Stipulated Judgment Amount; that PTS may not be able to prove its
6 counterclaims against Flatiron in this action; that if Flatiron was successful in proving liability it
7 would very likely be entitled to its attorney fees and expenses incurred in this litigation; and that
8 a judgment in Flatiron's favor may include amounts for prejudgment interest.

9 8. Pursuant to the covenant judgment agreement, Flatiron and PTS have jointly
10 stipulated to entry of a Stipulated Judgment in the amount of \$1,828,721 (the "Stipulated Judgment
11 Amount").

12 9. The Stipulated Judgment Amount reflects the amount Flatiron in good faith
13 calculated as its damages in 2018, prior to initiation of this action, without additions for attorney
14 fees and expenses or prejudgment interest. Of the \$1,828,721, Flatiron calculated \$318,249.50 for
15 investigation of the survey errors and adjustment of the misaligned approach girders;
16 \$1,438,700.14 for delays and impacts to Flatiron's construction of the approach superstructure;
17 and \$71,771.45 for the additional costs required to engage a new surveyor to complete PTS's
18 survey work for the Project. This calculation was reasonable when calculated in light of the actual
19 and estimated cost impacts of the investigation, repair, delay, and inefficiencies allegedly caused
20 by the survey errors.

21 10. The Stipulated Judgment amount is not the product of bad faith, fraud, or collusion.
22 It reflects the amount calculated by Flatiron in good faith as its damages prior to the filing of the
23 Complaint, and has not been increased to reflect attorney fees, expenses, or prejudgment interest.

24 11. PTS contends that it has claims against its insurance broker arising from
25 procurement of an inadequate insurance policy for the Project. PTS advised its brokers of the
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1 nature of the projects on which it was working—which were bridge projects—and it was unaware
2 until it tendered Flatiron’s claim that there was an exclusion in its insurance policy for work
3 involving bridges. PTS has agreed to assign these claims to Flatiron as part of the covenant
4 judgment agreement. The agreement allows Flatiron an opportunity to pursue compensation from
5 the broker to the extent the broker is liable for PTS’s lack of insurance coverage.

6 12. Given the circumstances facing the parties, the Stipulated Judgment Amount
7 represents a reasonable settlement amount.

8 II. CONCLUSIONS OF LAW

9 1. By filing the Notice of Intent to Settle on January 27, 2021, the parties provided
10 satisfactory notice to the Court of their intent to enter into a covenant judgment agreement.

11 2. By providing the parties an opportunity to present argument and evidence in
12 support of the reasonableness of the Stipulated Judgment Amount, the Court has satisfied the
13 hearing requirement of RCW 4.22.060(1).

14 3. Because the parties’ covenant judgment agreement for the Stipulated Judgment
15 Amount of \$1,828,721 reflects a reasonable settlement under the circumstances, the Court hereby
16 grants the parties’ joint Motion and directs entry of the Stipulated Judgment.

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18 IT IS SO ORDERED this 28th day of April, 2021.
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21 

22 Marsha J. Pechman
23 United States District Judge
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1 Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the forgoing document the counsel(s) of record listed below:

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DATED this 15th day of April, 2021, at Seattle, Washington.

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